

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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GERALD VANRYKEN, Appellant,

vs.

STATE OF WISCONSIN DEPARTMENT OF HEALTH SERVICES, Respondent.

Case ID: 2.0164

Case Type: PA

DECISION NO. 40734

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Appearances:

Gerald VanRyken, 654 McKinley St., Neenah, Wisconsin, appearing on his own behalf.

Attorney Nicole Porter, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin appearing on behalf of the State of Wisconsin Department of Health Services

**DECISION AND ORDER**

On October 24, 2024, Gerald VanRyken (VanRyken) filed an appeal with the Wisconsin Employment Relations Commission asserting he had been discharged without just cause by the State of Wisconsin Department of Health Services (DHS).

A hearing was held in Oshkosh, Wisconsin, on January 3, 2025, by Commission Examiner Peter G. Davis. The parties made oral closing arguments at the end of the hearing.

On January 24, 2025, Examiner Davis issued a Proposed Decision and Order, affirming the discharge of VanRyken by the DHS. VanRyken filed objections to the Proposed Decision on January 27, 2025. The DHS filed a response to the objections on February 1, 2025.

Being fully advised on the premises and having considered the matter, the Commission makes and issues the following:

**FINDINGS OF FACT**

1. Gerald VanRyken, herein VanRyken, was employed by the State of Wisconsin Department of Health Services (DHS) as a Psychiatric Care Technician Advanced at the

Winnebago Mental Health Institution (WMHI). He had permanent status in class at the time of his discharge.

2. Contrary to DHS policies that protect patient rights, over a period of many months, VanRyken used his cell phone to record 42 videos of the WMHI grounds and/or the interior and exterior of WMHI buildings.

3. Contrary to DHS policies that protect patient rights, VanRyken posted the videos referenced in Finding of Fact 2 on YouTube.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

### **CONCLUSIONS OF LAW**

1. The Wisconsin Employment Relations Commission has jurisdiction over this appeal pursuant to Wis. Stat. § 230.44 (1)(c).

2. The State of Wisconsin Department of Health Services did have just cause within the meaning of Wis. Stat. § 230.34(1)(a) to discharge Gerald VanRyken.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following:

### **ORDER**

The discharge of Gerald VanRyken by the State of Wisconsin Department of Health Services is affirmed.

Issued at Madison, Wisconsin, this 18<sup>th</sup> day of February 2025.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING DECISION AND ORDER**

Section 230.34(1)(a), Stats., states in pertinent part:

An employee with permanent status in class ... may be removed, suspended without pay, discharged, reduced in base pay or demoted only for just cause.

Section 230.44(1)(c), Stats., provides that a State employee with permanent status in class:

may appeal a demotion, layoff, suspension, discharge or reduction in base pay to the commission ... if the appeal alleges that the decision was not based on just cause.

VanRyken had permanent status in class at the time of his discharge and his appeal alleges that the discharge was not based on just cause.

The State has the burden of proof to establish that VanRyken was guilty of the alleged misconduct and whether the misconduct constitutes just cause for the discipline imposed. *Reinke v. Personnel Bd.*, 53 Wis.2d 123 (1971); *Safransky v. Personnel Bd.*, 62 Wis.2d 464 (1974).

WMHI prohibits employees from making unauthorized recordings of WMHI grounds and buildings (interior and exterior) due to the potential for such recordings to violate patient privacy. Based on the same privacy concerns, WMHI prohibits posting such videos on social media sites.

VanRyken admits that he used his cell phone to record 42 videos of the WMHI grounds and/or the interior and exterior of WMHI buildings.

VanRyken admits that he posted those 42 videos of the WMHI grounds and/or the interior and exterior of VMHI buildings on YouTube.

VanRyken contends that he has a free speech to post whatever he wishes on YouTube. The Commission does not find that argument persuasive. The WMHI interest in protecting patient confidentiality overrides any free speech interest.

VanRyken asserts that he made and posted the videos because he wants to improve patient treatment at WMHI. Assuming that to be so, his motivation did not allow him to violate DHS rules and policies designed to protect patient confidentiality.

Given the foregoing, the Commission concludes that VanRyken engaged in misconduct.

Turning to the issue of whether VanRyken's misconduct warrants discharge under the just cause standard, VanRyken argues that discharge is too severe a penalty for an employee with a currently clean disciplinary record. In response, WMHI points out that in 2011, VanRyken received a three-day and a five-day suspension from WMHI for making videos of WMHI grounds

and/or buildings and posting them on YouTube. Thus, WMHI persuasively contends that there is no reason to believe that a lesser level of discipline would bring about a change in VanRyken's behavior. WMHI also contends that VanRyken knowingly committed more than 40 separate acts of misconduct-each of which would have warranted discipline. The Commission finds these WMHI arguments to be a persuasive basis for concluding there is just cause for VanRyken's discharge.<sup>1</sup>

Therefore, the discharge of VanRyken is affirmed.

Issued at Madison, Wisconsin, this 18<sup>th</sup> day of February 2025.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James J. Daley, Chairman

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<sup>1</sup>VanRyken points to a Facebook page/site where some WMHI employees post material. WMHI, contrary to VanRyken, asserts that the page/site is not accessible to the public but that it will nonetheless be investigating the page/site for potential work rule violations. In any event, there is no evidence that the material posted shows WMHI grounds or buildings and thus there is no evidence of potential patient privacy implications. Thus, this argument does not persuasively establish disparate disciplinary treatment of VanRyken.